

1 subject of briefing.

2 JUDGE SIPPEL: In de novo?

3 MR. MILLS: Yes, while I  
4 understand that there may be some desire to  
5 revisit that, there is probably a procedure to  
6 reconsider a previous ruling in a case, this  
7 is not the time.

8 JUDGE SIPPEL: Not in this  
9 courtroom, no way. We are not doing any  
10 reconsideration.

11 MR. MILLS: - that this is de  
12 novo, that all the evidence upon which the  
13 hearing - the judge is going to decide this  
14 case has to be presented in the hearings, and  
15 that everyone is going to have a fair  
16 opportunity to cross-examine and the rest of  
17 it.

18 I don't think there is any reason  
19 to reexamine all of those issues here, and to  
20 have it be - there has already been some  
21 element of proof already established, and  
22 therefore there is some shifting - that is not

1 the law of this case.

2 MR. FREDERICK: Well, that is not  
3 true. What Judge Steinberg did not address is  
4 the statute of limitations issues, or the  
5 waiver claims that Comcast had made in which  
6 the Media Bureau said, we conclude that those  
7 are invalid.

8 And there is no basis for the  
9 Court to revisit issues that the Media Bureau  
10 has already decided, and that were not the  
11 basis of the delegation to the Court.

12 Now the Court has before it the  
13 carriage discrimination issues, but the Court  
14 does not have before it the statute of  
15 limitations question, the waiver claims that  
16 the Media Bureau decided as a matter of law  
17 Comcast was incorrect in their answer.

18 And we don't want to relitigate  
19 for purposes of efficiency and because that is  
20 outside the scope of what the Court's  
21 jurisdiction is, those matters that have  
22 already been decided by the Media Bureau, and

1 that Judge Steinberg had no occasion  
2 specifically to address when he made his  
3 statement about de novo review.

4 MR. MILLS: I don't know how this  
5 court could determine that a remedy is  
6 appropriate and make that recommended decision  
7 without establishing that there is a basis for  
8 it, the discrimination as well as - to the  
9 extent there are preliminary issues, that  
10 would have to be part of the recommended  
11 decision it seems to me.

12 MR. SOLOMON: But these are also  
13 factual issues, Your Honor. And it doesn't  
14 seem appropriate that if we have a hearing,  
15 and the facts underlying certain procedural  
16 preliminary decisions by the Media Bureau  
17 turned out to be disproved, that you are in a  
18 situation under the HDO that you say, well, it  
19 turns out I have facts before me that show the  
20 Media Bureau's view on that is completely  
21 incorrect, but I can't do anything.

22 MR. LEVY: Your Honor, let me

1 invite your attention to a single example at  
2 issue here, and that is paragraph 72 of the  
3 hearing designation order. In the middle of  
4 that paragraph, the Media Bureau found,  
5 whether or not Comcast had the right to retier  
6 the NFL Network pursuant to a private  
7 agreement is not relevant to the issue of  
8 whether doing so violated the act and the  
9 program carriage rules, and then it goes on.

10 That is a finding by the  
11 Commission - excuse me, finding by the Bureau.  
12 It is outside the scope of the delegation that  
13 was submitted to you. And the answer to the  
14 argument that was just made is that that  
15 paragraph, that finding on that issue binds  
16 Your Honor. You can easily find that there is  
17 a basis for remedy here, because the Media  
18 Bureau has reached that determination.

19 When the Media Bureau made the  
20 delegation to the administrative law judge, it  
21 did so in quite specific terms. It did so in  
22 the conclusion, for example, on page 41, the

1 conclusion to its discussion of the  
2 discrimination claim. It did not do so in  
3 the part of the discussion that talks about  
4 the threshold procedural issues.

5 MR. FREDERICK: Your Honor, I'd  
6 like to address paragraph 105, MASN. We  
7 conclude that MASN filed its program,  
8 carriage, complaining compliance with the  
9 program carriage statute of limitations. That  
10 is a finding that is binding on the court, and  
11 there is no need to relitigate that, and the  
12 notion that there were somehow improper facts  
13 that the Media Bureau based that on is a  
14 completely baseless charge here, where they  
15 had every opportunity, since they raised that  
16 defense, to put in all the facts that they  
17 wanted to, the declarations and documents that  
18 they had.

19 And it is simply a waste of time,  
20 as well as outside Your Honor's jurisdiction,  
21 to be relitigating a question that goes to  
22 statute of limitations and the waiver of claims

1 that Comcast advanced against MASN.

2 JUDGE SIPPEL: All right. Is  
3 there going to be a statute of limitations  
4 defense offered in this case?

5 MR. TOSCANO: There is absolutely a  
6 statute of limitations defense, including  
7 based on the fact that at the NFL they didn't  
8 even specify what remedy they wanted until  
9 their reply. And in their reply they for the  
10 first time made it clear that they are seeking  
11 carriage on expanded basic. And it is crystal  
12 clear based even on the Media Bureau's own  
13 reasoning as well as the arguments in the  
14 NFL's own reply that the statute of  
15 limitations has run as to that aspect of the  
16 relief that the NFL has sought.

17 Furthermore, specifically  
18 addressing paragraph 72 of the HDO which Mr.  
19 Levy directed your attention to, if you look  
20 at the first sentence, they are simply  
21 declining to dismiss it. They are not making  
22 a ruling that this is dispositive.

1                   And if you look at their  
2 reasoning, they say parties to a contract  
3 cannot insulate themselves from enforcement of  
4 the act or our rules by agreeing to acts that  
5 violate the active rules.

6                   That was never Comcast's argument,  
7 so the fact that the Media Bureau did not  
8 accept - does not agree with that proposition  
9 has nothing to do with the fact that what the  
10 reason that the contractual right is extremely  
11 relevant - there are two. First of all  
12 Comcast tiered the NFL Network in the wake of  
13 an enormous increase in the price of the NFL  
14 Network to Comcast; call that the wholesale  
15 price.

16                   The tiering was in effect an  
17 increase in the retail price, to consumers.  
18 When Comcast accepted that increase in the  
19 wholesale price, it did so premised on the  
20 fact, and on its express understanding, that  
21 it had the contractual right to tier. And  
22 that contractual right to tier is part of the

1 entire agreement and deal between the parties,  
2 that once that was in the deal, Comcast had  
3 compelling justifications, economic  
4 justifications under the contract, to exercise  
5 that right.

6 One of the most important issues  
7 before Your Honor will be whether Comcast had  
8 legitimate nondiscriminatory reasons for  
9 tiering the NFL Network. And a very important  
10 part of the answer to that question is found  
11 in the deal that the parties reached. And the  
12 hearing right that the NFL voluntary agreed to  
13 give to Comcast is an integral, in fact key  
14 part, of that deal.

15 The second place where it comes  
16 into the analysis is, if Your Honor ever gets  
17 to remedy, and I don't think there will be a  
18 need to, but in that event, the pricing in the  
19 contract, again, is highly dependent on that  
20 critical right. Comcast's willingness to pay  
21 for the NFL Network was again based on its  
22 understanding that it had the right to tier.



1           And as long as there is any  
2           dispute over that right to tier, there cannot  
3           be any understanding taken from the pricing in  
4           the parties' agreement. Therefore, for both  
5           those reasons and others, whether or not  
6           Comcast had the right to tier the NFL Network  
7           under the parties contract is key to this  
8           case.

9           JUDGE SIPPEL: I was just talking  
10          about statue of limitations. All that ties in  
11          with the statue of limitations?

12          MR. TOSCANO: No, that deals with  
13          paragraph 72, which is whether this case  
14          should have been dismissed pending the New  
15          York State litigation. And that was the  
16          paragraph that Mr. Levy directed your  
17          attention to.

18          MR. LEVY: But Your Honor, if you  
19          look at the structure of this order, and to go  
20          back to the first point that Mr. Toscano  
21          raised, the specificity of the requested  
22          relief, the Media Bureau's conclusion on that

1 is firm. It's not contingent. It's not based  
2 - it doesn't recognize any disputed factual  
3 issues. We conclude that the NFL's requested  
4 answer was sufficiently specific under our  
5 rules; end of discussion.

6 My strong suggestion, Your Honor,  
7 and I invite you to do this, is to go back and  
8 look at the structure of this hearing  
9 designation order. There is no question that  
10 the hearing designation order recognizes  
11 disputed issues of fact on the threshold issue  
12 of discrimination, whether or not there has  
13 been discrimination. And on the threshold  
14 question of Section 616.

15 But on these - excuse me, on the  
16 substantive issue of Section 616 - but on the  
17 threshold issues of discrimination, the effect  
18 of the carriage agreement, the specificity of  
19 the requested relief, and there are others,  
20 there is no delegation to Your Honor at all.  
21 The Media Bureau has resolved those issues,  
22 and they are binding in this proceeding.

1                   And if we get into those issues as  
2 well as the others we are going to find  
3 ourselves in a process that is going to take  
4 an extended period of time.

5                   MR. FREDERICK:     Your Honor, for  
6 MASN I haven't heard Comcast dispute that the  
7 Media Bureau's statute of limitations order on  
8 MASN is binding on Comcast.     That's in  
9 paragraph 105. Nor has Comcast contested the  
10 Media Bureau's finding that the contract of  
11 carriage weights MASN's discrimination  
12 argument, that was binding against Comcast,  
13 they haven't disputed that here.

14                  And so I think that if you go  
15 through the MASN sections of the order, there  
16 are three or so procedural arguments that  
17 Comcast made that were cited against Comcast  
18 by the Media Bureau that are not the subjects  
19 of the delegation, and they are binding on the  
20 court.     And the court would exceed its  
21 jurisdiction if it revisited those questions  
22 as well as taking time that could be better

1 spent getting to the merits of the dispute.

2 MR. SOLOMON: Your Honor, let me  
3 comment on that. If you look, starting on  
4 paragraph 112 -

5 JUDGE SIPPEL: What paragraph?

6 MR. SOLOMON: Starting on  
7 paragraph 112 of the hearing designation  
8 order, this is in the context of talking about  
9 contract - Comcast area specifications,  
10 contract based justification, the term fees,  
11 the release, before it gets to editorial  
12 specifications. And my point was, as we  
13 present evidence and perfect their evidence  
14 regarding the nature of the term sheet which  
15 is clearly within the issues as Mr. Frederick  
16 just described that have been designated on  
17 our justifications, if facts come out that  
18 make it clear that the underlying factual  
19 determinations by the Media Bureau with  
20 respect to the statute of limitations are  
21 simply wrong, it seems perfectly appropriate  
22 for Your Honor to rule on that. There is

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1 nothing in the HDO that says you are  
2 prohibited from looking at that issue when you  
3 have a full factual record before you.

4 The purpose of the HDO was to give  
5 a full factual record.

6 MR. MILLS: Your Honor, a couple  
7 of observations. First of all, it seems to me  
8 that the findings that were made which were  
9 necessary in the context of the Media Bureau's  
10 process in determining whether the case was  
11 going to proceed to the next stage, that's in  
12 the nature of a motion to dismiss, and it  
13 doesn't mean that Your Honor would not be  
14 permitted, I would think, to dismiss on those  
15 bases before evidence is introduction. But a  
16 motion to dismiss doesn't preclude the parties  
17 from introducing evidence in trial.

18 And the second thing is, Judge  
19 Steinberg already ruled that all the issues in  
20 this case are open; that they are to be  
21 determined de novo. And I don't know about  
22 the other cases, the NFL and MASN case, but in

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1 the Wealth TV case, I don't think the  
2 procedural questions are going to involve  
3 probably any additional facts that aren't  
4 already in contest in the discrimination. And  
5 this can all be resolved in the proposed  
6 findings of fact and conclusions of law. The  
7 parties can simply take what has been  
8 developed in the record, and propose to Your  
9 Honor that you make findings on these issues.  
10 The opposing parties can say no, that finding  
11 is not appropriate. They can argue that it  
12 was already resolved by the Media Bureau.  
13 They can argue whatever they want. But this  
14 can all be resolved at the end of the  
15 proceeding with the proposed findings and  
16 conclusions.

17 MS. WALLMAN: Your Honor, for  
18 Wealth TV, let me give you an example. Cox  
19 raised the statute of limitations argument  
20 that the Media Bureau had no basis in the law  
21 or rules. They argued that my one year to  
22 file the complaint ran from the last

1 unsuccessful conversation that we had with  
2 Cox. And the Bureau said there is absolutely  
3 no basis for that in the law and regulations.  
4 The regulations are absolutely clear that the  
5 period for filing a complaint runs a year from  
6 the prefiling notice.

7 I don't wish to spend more time  
8 and money for my client to re-argue that and  
9 re-brief that before Your Honor. I don't  
10 think it's fair to ask us to do that.

11 We have another example where very  
12 late in the consideration of the record by the  
13 Media Bureau before they issued the hearing  
14 investigation order, all of the defendants to  
15 my recollection said, oh, we're shutting down  
16 MOJO. There is no basis; it's mooted. And so  
17 we put papers before the Bureau saying no, the  
18 act of discrimination occurred when they did  
19 the discrimination. It's not cured by killing  
20 the affiliated programmer. And the Bureau  
21 said that is absolutely right; it doesn't moot  
22 anything. It's been briefed and argued, and

1 I don't see any utility in re-upping those  
2 issues before Your Honor all over again.

3 JUDGE SIPPEL: Well, what this is  
4 telling me is that the parties should make an  
5 effort to stipulate as to what they can  
6 stipulate to under the HDO and what they can't  
7 stipulate to, so that I know, you know, what  
8 it is that you are asking.

9 We haven't even gotten that far  
10 yet. We are just talking about discovery sort  
11 of in the abstract.

12 MR. FREDERICK: But Your Honor,  
13 what drives the discovery is a conclusion of  
14 whether or not you think the matter is  
15 completely wide open, or whether or not we are  
16 confined to the issues delegated to you. If  
17 we have to redo discovery on the statute of  
18 limitations matter that has already been  
19 resolved against Comcast, that is obviously  
20 expanding the scope of the discovery.

21 JUDGE SIPPEL: I understand that  
22 exactly. And that would be another basis for



1 objecting to the request for discovery, or  
2 asking for a protective order. I can only  
3 take these things as they come up. I don't  
4 have this universal knowledge of everything  
5 that has happened in this case, but I'm  
6 getting better every time.

7 MR. SOLOMON: Your Honor, I would  
8 like to go back to the suggestion about the  
9 proposed findings, because at least with  
10 respect to the MASN case, to respond to Mr.  
11 Frederick, and I believe this is true with the  
12 other cases that were involved as well, none  
13 of the objections are based on the fact that  
14 we were seeking evidence that was somehow  
15 solely related to the procedural issues. So  
16 I don't think it is expanding discovery to the  
17 extent that in our proposed findings we are  
18 arguing issues about statute of limitations,  
19 and the complainants are arguing that, either  
20 A, we're wrong, or that B, it's already been  
21 decided. I don't see how it affects the  
22 conduct of the hearing in any substantial way

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1 particularly.

2 JUDGE SIPPEL: In other words  
3 there is not going to be any discovery sought  
4 on the statute of limitations. So it will be  
5 an issue of law, in effect.

6 MR. SOLOMON: Well, there may be  
7 factual issues as I was point out in the MASN  
8 case, factual issues that we find out through  
9 discovery with respect to the business  
10 justifications for what we were doing. And  
11 the evidence we present on that issue may also  
12 shed light on the statute of limitations  
13 issues. And beyond that it is simply legal  
14 issues that may be in the proposed findings.  
15 And you can choose at that point, if the other  
16 parties say we should disregard it and not  
17 rule on it, that's a ruling, it's up to you to  
18 decide which of us is correct.

19 MR. FREDERICK: Well, to the  
20 extent they are asking you to revisit an order  
21 that the Media Bureau has decided, that is  
22 inviting error. I'll just put that out there

1 for the record. Because there are issues that  
2 the Media Bureau decided that are outside of  
3 your jurisdiction. To the extent that the  
4 defendants are inviting you to reconsider  
5 those issues, they are inviting error.

6 MR. MILLS: Your Honor, this is  
7 going to be a recommended decision. The Media  
8 Bureau feels like it already decided that  
9 legal issue, and doesn't take the Commission's  
10 side that it already decided that, it doesn't  
11 have to take the proposed finding, that  
12 particular conclusion of law. It's not going  
13 to delay the issue.

14 JUDGE SIPPEL: Mr. Beckner.

15 MR. BECKNER: Yes, I just wanted  
16 to respond to Ms. Wallman's statement about  
17 the discontinuance of MOJO, which I think  
18 illustrates frankly the folly of this exercise  
19 of trying to divine in the HDO some issue that  
20 might be precluded from your consideration.

21 The question here is, did these  
22 parties discriminate by not carrying Wealth TV

1 to benefit their own so-called substantially  
2 similar program, service, which is called  
3 MOJO, which in fact was discontinued.

4 It seems to me that you can't  
5 decide the question of discrimination without  
6 looking at the fact that MOJO was  
7 discontinued. We are not saying that that  
8 immediately makes the complaint dismissable,  
9 but to say that evidence, that that piece of  
10 evidence you can't consider I think is an  
11 absurd proposition frankly.

12 MS. WALLMAN: To the contrary I  
13 have invited the Court to require evidence on  
14 that point. That is one of the questions that  
15 the Media Bureau's now rescinded order sought  
16 to focus on. Why was MOJO canceled? The  
17 Media Bureau wanted to know that, and there is  
18 a perfect opportunity for you to volunteer and  
19 submit a position.

20 MR. BECKNER: Well, with all due  
21 respect, we will prepare our cases as we  
22 choose to prepare it.

1 JUDGE SIPPEL: Excuse me, I'm  
2 sorry, you had your hand up, sir.

3 MR. BLAKE: Yes, it seems to me  
4 that Comcast in the application to Judge  
5 Steinberg asking that these procedural issues  
6 be sent to the Commission to be looked at by  
7 the Commission, which request may still be  
8 pending, was admitting that those issues are  
9 not before the ALJ and are not within the  
10 scope of the hearing designation order.

11 JUDGE SIPPEL: Where is that? Is  
12 this in a transcript?

13 MR. SOLOMON: This was in our  
14 motion for certification or clarification.  
15 And we got clarification. And Judge Steinberg  
16 had a footnote that basically said he is not  
17 ruling on that, which certainly could be read  
18 - it certainly could be read as saying those  
19 are issues before him.

20 I again think in the proposed  
21 findings it is perfectly appropriate for the  
22 other side to argue no, that issue was

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1 precluded. But it seems to me a little odd at  
2 this point where you have the Commission  
3 saying to the ALJs, we are comfortable with  
4 what you did. Go forward, try to do it  
5 expeditiously. We have just reached agreement  
6 on schedules that we simply go forward, and if  
7 there are legal arguments to be argued, they  
8 get argued in the proposed findings.

9 JUDGE SIPPEL: I agree. I agree.  
10 This is just not advancing the ball. I'm not  
11 going to touch this right now. But thank you  
12 for bringing it up.

13 I was going to ask issues be set  
14 out as to which can be agreed to. I think  
15 again at this point, we've got more important  
16 things to do.

17 I will go back and read these  
18 sections, certainly that you referred me to.  
19 I am not going to say up here now what my  
20 feeling is with respect to what's essentially  
21 hearsay document in the HDO when it comes in  
22 here. It certainly would not be received in

1 to evidence as an exhibit. It is part of the  
2 record in a broad sense of course. But I'm  
3 not convinced - I really don't know. I don't  
4 know what the answer is. But you certainly  
5 will have a chance to address it in findings  
6 if not before.

7 Believe me, I have no interest in  
8 trying any other fact or any other legal issue  
9 in this case than I have to. I am not looking  
10 for things to do. So I'm going to take a very  
11 narrow view of things.

12 But on the other hand, I am not in  
13 a position today to tell you where that line  
14 begins and ends.

15 Now let me review what we have. I  
16 have an order from Time-Warner that I am able  
17 to sign today. Are there any other  
18 modifications to that order?

19 MR. COHEN: Mr. Harding, just the  
20 title we are going to fix for Your Honor,  
21 we'll send it to you and we're done.

22 JUDGE SIPPEL: Okay, and I can

1 even have my - that would be helpful. And  
2 it's going to be called -

3 MR. HARDING: And we'll amend the  
4 statement about written recs - make it that  
5 it's required rather than optional.

6 MR. SOLOMON: It is in paragraph  
7 two, Your Honor.

8 JUDGE SIPPEL: Further revise.  
9 All right, well, we can do that. We can  
10 figure that out. But the dates are the same.  
11 And the chores are the same. Okay.

12 And on the 10<sup>th</sup> of February, which  
13 is a Tuesday, both sides will submit,  
14 hopefully reduced as much as possible, a  
15 status report. And what was the subject of  
16 the status?

17 MR. COHEN: Protective order, and  
18 the scheduling disputes that haven't been  
19 resolved.

20 JUDGE SIPPEL: That is right.  
21 You were going to discuss all that. Thank  
22 you. I mean it will be in the transcript.



1       Okay, we're all set for now. I'm sure we will  
2       have another conference. But I'm not going to  
3       set it now. I don't see any need right now.

4               And does anybody else have any  
5       other pressing issue with respect to what is  
6       on your mind before we leave here today?  
7       We've got everything we need I think for this  
8       phase.

9               All right, that is it. Before I  
10       close the record, I don't know if I should be  
11       doing this, but I took this up with the ethics  
12       officer. My wife, unbeknownst to me, she  
13       bought herself about 20 shares of Comcast, and  
14       has herself and my daughter on it. And there  
15       is a limit in terms of when the conflict kicks  
16       in for a relative, and I was pretty much  
17       laughed off the telephone by the ethics  
18       office. It just doesn't work - I mean there  
19       is not enough money involved. It's minuscule.  
20       In other words there is no violation by my  
21       wife owning 20 shares of Comcast. I've got it  
22       all disclosed. I mean it's all in my

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1 disclosure papers. And I ran this through the  
2 ethics officer just to be sure. But they have  
3 a specific number. There are a lot of zeroes  
4 in it. This doesn't come near reaching it.

5 So I just want the record to be -  
6 I don't want any after the fact suggestions.  
7 But it certainly doesn't affect me. I didn't  
8 even know - well, I did know she bought it,  
9 because I had to disclose it.

10 MR. COHEN: Your Honor, I  
11 appreciate the information. If somebody on  
12 the other side of the table objects before we  
13 start to go down this path, I'd like to hear  
14 it, and if not today, timely. Basically on  
15 the cable side we don't have any objection.  
16 We understand.

17 MR. MILLS: If there is going to  
18 be a motion to recuse, we should probably deal  
19 with that as soon as possible.

20 MR. LEVY: Your Honor, I've been  
21 through a situation like this before, and the  
22 lesson I learned from that is, not to take a

1 position without talking to my client.

2 So if we have an issue, we will  
3 let you know by Tuesday.

4 JUDGE SIPPEL: That's fine. I  
5 think it's in the 20 to 25 share limit.

6 MS. WALLMAN: Wealth TV reserves  
7 the same.

8 JUDGE SIPPEL: All right.

9 MR. COHEN: Your Honor, do I  
10 understand they will be required to - if they  
11 have an issue - by Tuesday the 10<sup>th</sup>?

12 MR. LEVY: No, this coming  
13 Tuesday. We will provide notice if we have an  
14 issue.

15 MR. COHEN: And is that true for  
16 Wealth as well? Since their client is here,  
17 I don't want to reserve - they could have this  
18 issue come up in April. I don't want this  
19 issue to come up in April.

20 MS. WALLMAN: I think we could  
21 respond by next Tuesday.

22 MR. FREDERICK: The same for MASN.

1 JUDGE SIPPEL: If you could do it  
2 Monday afternoon, as early as you can get it  
3 in, because as I say, I'm here Tuesday all  
4 day. But then Wednesday through the following  
5 Tuesday, following Monday, I probably will  
6 come back in the following Tuesday.

7 MR. BECKNER: Your Honor, could  
8 we have an express response either way, not  
9 just a silence means we are okay with it, but  
10 actually a filing that says, either we don't  
11 object or we do object, so that there is no  
12 ambiguity.

13 JUDGE SIPPEL: Well, that would  
14 be very handy to me.

15 MR. LEVY: We will talk to our  
16 client, but we will make sure everybody knows  
17 where we are on this by late Monday or Tuesday  
18 if we can.

19 JUDGE SIPPEL: Okay. Thank you.  
20 (Whereupon at 11:46 a.m. the  
21 proceeding in the above-entitled  
22 matter was adjourned.)

# CERTIFICATE OF REPORTER, TRANSCRIBER, AND PROOFREADER

Herring v Time Warner, et al

Name of Hearing

MB DOCKET NO. 08-214

Docket No. (if applicable)

445 12<sup>th</sup> STREET, S.W., WASHINGTON, D.C.

Place of Hearing

January 29, 2009

Date of Hearing

We, the undersigned, do hereby certify that the foregoing pages, numbers 56 through 105, inclusive, are the true, accurate and complete transcript prepared from the reporting by James Salandro (Reporter's Name) in attendance at the above identified hearing, in accordance with applicable provisions of the current Federal Communications Commission's professional verbatim reporting and transcription statement of Work and have verified the accuracy of the transcript by (1) comparing the typewritten transcript against the reporting or recording accomplished at the hearings and (2) comparing the final proofed typewritten transcript against the reporting or recording accomplished at the hearing or conference.

February 6, 2009

James Salandro

Date

Legible Name and Signature of Reporter

Name of Company: Neal Gross Co.

February 6, 2009

Doug Wedel

Date

Legible Name and Signature of Transcriber

Name of Company: Neal Gross Co.

February 6, 2009

Tracy Cain

Date

Legible Name and Signature of Proofreader

Name of Company: Neal Gross Co.